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DIGEST OF OTHER RECENT VIRGINIA DECISIONS.**Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

CARTER *v.* WASHINGTON & O. D. RY.

March 21, 1918.

[95 S. E. 464.]

1. Appeal and Error (§ 839 (1)*)—Review in Case of More Than One Trial.—Where errors assigned are that court erred in setting aside a verdict at second trial and in entering judgment for defendant at third trial, the court, on appeal, will look first to the record of the second trial; and, if there was error in setting aside the verdict, judgment will be entered on the verdict by the court on appeal, in view of Code 1904, § 3484, providing that when there have been two trials, the appellate court will look first to the proceedings on the first trial.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 578.]

2. Appeal and Error (§ 999 (1)*)—Review—Setting Aside Verdict.—On appeal from a decision setting aside verdict, the evidence being certified, all evidence will be considered and the verdict sustained, unless it be against the law and evidence, or without evidence.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 577, 619.]

3. Appeal and Error (§ 1097 (1)*)—Prior Decision as Law of Case.—Where, in an action by a railway mail clerk for injuries due to removal of iron bar across door of mail car, the case was reversed on the ground that plaintiff either knew of the removal or acquiesced therein, but on the next trial there was an express denial of knowledge or acquiescence, the decision on the former appeal is not the law of the case on the next appeal; the doctrine being inapplicable where the facts on both trials are not substantially the same.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 651.]

4. Carriers (§ 241*)—Injury to Passenger—"Passenger."—A railway mail clerk was a "passenger" entitled to the very highest degree of care from defendant railway.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Passenger. For other cases, see 2 Va.-W. Va. Enc. Dig. 694, 700.]

5. Carriers (§ 330*)—Injury to Mail Clerk—Contributory Negligence.—If plaintiff railway mail clerk in the performance of his duties went to the door of a poorly lighted mail car while the train was in motion, knowing that the safety bar had been removed, and was

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

thrown out of the car door because he failed to take proper precautions, his contributory negligence would bar recovery.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 708.]

6. Carriers (§ 290 (1*))—Injury to Mail Clerk—Contributory Negligence.—If plaintiff did not know that the safety bar upon which he had been accustomed to rely had been removed, and without any contributory negligence sustained injury by being thrown out of the car door, he is entitled to recover.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 702.]

7. Appeal and Error (§ 1153*)—Determination of Case—Final Judgment.—Where the court erred in setting aside a verdict for plaintiff, the court on appeal will enter the judgment which the trial court should have entered.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 628.]

Error to Circuit Court, Fairfax County.

Action by Alfred B. Carter against the Washington & Old Dominion Railway. From a judgment for defendant, plaintiff brings error. Reversed and rendered.

Moore, Keith, McCandlish & Hall, of Fairfax, for plaintiff in error.

W. J. Lambert, of Washington, D. C., and *C. E. Nichol*, of Alexander, for defendant in error.

LANE v. COMMONWEALTH.

March 21, 1918.

[95 S. E. 466.]

1. Intoxicating Liquors (§ 223 (1*))—Illegal Possession—Indictment and Information.—Under Acts 1916, c. 146, § 7, providing that an indictment for any first offense under sections 3, 4, or 5 of the act shall be sufficient if substantially in the form or to the effect set forth in those sections, where an indictment charged the keeping of intoxicating liquors in violation of section 3, no conviction could be had under section 17, making it unlawful to keep ardent spirits in a house of ill repute.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 28.]

2. Intoxicating Liquors (§ 224*)—Illegal Possession—Presumptions.—Acts 1916, c. 146, § 65, making possession of more than one gallon of distilled liquor in one's home prima facie evidence of possession for the purpose of sale, creates only a rebuttable presumption as to the purpose.

[Ed. Note.—For other cases, see 8 Va.-W. Va. Enc. Dig. 33.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.